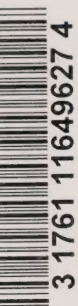


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Ontario Legal commission inquiry into labour disputes

Hearings

v 30.

April 1967



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ROYAL COMMISSION
INQUIRY INTO LABOUR DISPUTES

s634

HEARINGS HELD AT
TORONTO

VOL. NO.

30

DATE

April 28, 1967

Official Reporters

NETHERCUT & YOUNG LIMITED
48 YORK STREET
TORONTO 1, ONTARIO
TELEPHONE 363-3111

IN THE MATTER OF The Public
Inquiries Act, R.S.O. 1960,
Ch.323

- and -

IN THE MATTER OF an Inquiry
Into Labour Disputes

BEFORE: The Honourable Ivan
C. Rand, Commissioner,
at 123 Edward Street,
Toronto, Ontario, on
Friday, April 28th,
1967

E. Marshall Pollock Counsel to the Commission

APPEARANCE:

The Board of Trade of Metropolitan Toronto

R. P. Riggin Chairman, Labour Relations Comm.

R. E. Alden Member, Labour Relations Comm.

F. G. Hamilton Member, Labour Relations Comm.

N. M. Rogers, Q.C. Member, Labour Relations Comm.

T. G. O'Connor Legal Secretary

Nethercut & Young Limited, Official Reporters, 48 York
Street, Toronto, Ontario. Per T. F. Conlin, sworn.

Toronto, Ontario,
Friday, April 28,
1967.

---On commencing at 10:00 a.m.

MR. POLLOCK: The Board of Trade of Metropolitan Toronto, Mr. R. P. Riggin, Chairman Labour Relations Committee, and Mr. R.E. Alden, a Member of the Labour Relations Committee; and Mr. F. G. Hamilton, a Member of the Labour Relations Committee; Mr. N. M. Rogers, Q.C., also a Member of the Labour Relations Committee; and Mr. T. G. O'Connor, Legal Secretary to the Board of Trade.

Gentlemen, I can say that both the Commissioner and I have read your submission with considerable interest and the proceedings here are extremely informal and we hope frank discussion will ensue. We are prepared to let you present this brief in any manner you see fit and we can talk about the points raised and some other points and hope that we will have a productive day.

MR. RIGGIN: Mr. Commissioner and Mr. Pollock, you have our submission, as you have mentioned. Perhaps we could start by having me speak to it very briefly. At the outset we would like to thank you very much for the questionnaire that was sent around. This made our task very much simpler, and you will see from the way we have constructed our brief that we have simply followed the headings in the questionnaire. We would like to point out that we filed additional material with you regarding the use of injunctions in labour disputes. You will

1 have noticed that this was prepared more than a
2 year ago. We originally prepared it for submission
3 to certain government people and to the McRuer
4 Inquiry into Civil Rights. I mention this because
5 it shows our deep concern regarding this respect
6 or disrespect for the law, and flouting laws; some
7 time prior to the appointment of this Commission.
8 The material, in our view, was valid then and we
9 respectfully submit that it is still valid.

10 THE COMMISSIONER: Before you get into
11 the substance of it, would you just straighten me
12 out in this. Sometimes there is a chamber of commerce
13 and sometimes there is a board of trade. Is there
14 any difference between the functions or purposes
15 of both of these organizations?

16 MR. RIGGIN: I can answer this, but
17 Mr. O'Connor could do a better job, sir. He is Legal
18 Secretary of the Board of Trade.

19 THE COMMISSIONER: Well, I am very
20 curious to know because in some places you see one
21 and in other places you see the other.

22 MR. O'CONNOR: Mr. Commissioner, the
23 names are synonymous really. There is no difference
24 between the two.

25 MR. RIGGIN: Some communities call it
26 a board of trade and some call it chambers of commerce,
27 but they are basically the same.

28 Now, coming to our brief you will have
29 that seen/the underlying theme, if you will, the basic
30 theme of our submission is that the existing concept

1
2 of compulsory collective bargaining as we know it
3 and as it has developed here has generally served, in
4 our view, everyone concerned pretty well. Now, we
5 realize that perhaps there have been failings in it,
6 we know this, but generally speaking we say that
7 it has served us reasonably well and we would be
8 very hesitant to accept or see sweeping changes
9 made simply for the sake of making substantial
10 changes. On the other hand, we do feel that there
11 are some areas that certainly should be emphasized
12 with changes considered and in general these I think
13 are really true. One is greater union responsibility,
14 and in this regard we submit that unions are now
15 in the position where they should be financially
16 responsible through the courts for their wrongdoings.

17 The other is in the area of enforcement.
18 Regarding enforcement, we have several points on
19 that. For example, we feel that consent to prosecute
20 from the Ontario Labour Relations Board should not
21 be a prerequisite to proceeding. We believe that the
22 Crown should press the case rather than the
23 employer being put in the position of pressing a
24 case against his own employees. These are some of
25 the examples I am giving you of the two important
26 points we are making regarding more union responsi-
27 bility and greater enforcement.

28 Now, regarding strikes, as you will
29 have seen from our submission our basic point is
30 that as an integral part of the collective bargaining

1 process the right to strike should be retained
2 except in the case of essential public services in
3 which case we see no alternative but compulsory
4 arbitration, and since it really is a matter of
5 public concern we believe that the arbitrator
6 should be an appointee of the government. Still on
7 the matter of strikes, we feel very strongly, sir,
8 that an employee should have the right to work
9 whether there is a strike or not. We feel that
10 perhaps too much emphasis in our legislation and
11 in our debates regarding these problems, too much
12 emphasis has been placed on big unions and big
13 employers. We feel that the balance between those
14 two parties perhaps is not too bad at the present
15 time. We are deeply concerned about the position
16 of the small employer who can quite readily be
17 "put to the wall", if you will, by a powerful trade
18 union. But more important than the consideration
19 of the employer and the trade union, we are deeply
20 concerned about the position of the employee.
21 After all, the Act was originally passed for his
22 protection and we cannot help but feel that some-
23 times he is being forgotten, and the emphasis is
24 being placed on big business and big trade unions.

25 THE COMMISSIONER: And what instances
26 would you cite of that?

27 MR. RIGGIN: There are many, but
28 for example, there is no requirement under the Act
29 any longer, sir, that employers need be at the
30 bargaining table, or the bargaining committee of

1 the union. And you will run into circumstances
2 where simply paid organizers of the trade union
3 show up to negotiate with the employer. Now this,
4 in our view, hurts communications for one thing.
5 The employer must be quite careful what he says
6 about bargaining and so on, and we feel that with
7 the presence of employees in the bargaining unit
8 of collective bargaining that communications will
9 be improved with the people in the plant or shop.

10 MR. POLLOCK: Has there been any
11 significant change to your knowledge in the
12 composition of bargaining committees since the
13 provision was changed in the Labour Relations Act?

14 MR. RIGGIN: I cannot comment on
15 that directly, Mr. Pollock, from my own experience.
16 From my own experience I would say that there has
17 not been.

18 MR. POLLOCK: They still have
19 members or employees of the employer on the
20 bargaining committee?

21 MR. RIGGIN: Now, don't misunder-
22 stand me, I didn't mean to imply that employees have
23 disappeared completely from collective bargaining
24 or the bargaining table once the change in the Act
25 was made. I am just saying that how could such a
26 thing fall by the wayside in the Act if the emphasis
27 should be on the protection of the people for whom
28 the Act was originally passed? This is the point I
29 was making in that respect. I do understand,
30 though, that there have been cases where bargaining

1 at the top, if you will, has been carried out with
2 no employees in the bargaining unit being present.

3 MR. POLLOCK: Do they ratify the
4 agreement, the employees in the unit, would they
5 ratify that agreement?

6 MR. RIGGIN: I would think that most
7 contracts or memorandums of understanding made at
8 the bargaining table are almost always subject to
9 ratification by the membership.

10 MR. POLLOCK: So they have their
11 final say at the crucial stage.

12 MR. RIGGIN: They do, but perhaps
13 this is one reason why we are having more turn-downs
14 by the membership. They are not kept posted through-
15 out negotiations.

16 MR. POLLOCK: And you think they
17 would be kept better posted if one of the members
18 of the negotiating committee was an employee from
19 the ranks rather than a business representative of
20 the union?

21 MR. RIGGIN: I think the
22 opportunities for communication are much better.

23 THE COMMISSIONER: Well, you think
24 at the present time the ordinary employees' position
25 to deal with such complicated documents as the
26 agreement, which in some cases would reach many
27 pages, maybe 50 or 60 pages?

28 MR. RIGGIN: Parts of it, certainly,
29 sir.

30 THE COMMISSIONER: But to use a word

1 now is that it is so "sophisticated" and you have
2 to have some expertness in dealing with it and isn't
3 really at the bargaining table the influential
4 factors the considerations advanced rather than the
5 individual who advances them?

6 MR. RIGGIN: Yes, but as Mr. Pollock
7 has said all of that has to go back for ratification
8 including these sophisticatedly conceived clauses.

9 THE COMMISSIONER: Well that is true
10 in Quebec, but the generality of the result is that
11 it strikes me, what influence is the broad vote of
12 the member. They know the difference between \$1.00
13 and \$2.00, and so far as the details are concerned,
14 it has really become a very complicated affair now.
15 You have got to have men who have developed and the
16 labour men in this country yet haven't developed.
17 That is to say, they don't appear and they haven't
18 a tribunal, but even before the Labour Commission
19 aren't they generally represented by lawyers or
20 leaders, officers of the union?

21 MR. RIGGIN: This is true, yes, and
22 this is very good. The best thing for management is
23 to have a good

24 THE COMMISSIONER: But you think
25 the men are not protecting themselves the way they
26 ought to.

27 MR. RIGGIN: We are saying, first
28 of all, that some of the changes in the Labour
29 Relations Act have been made looking at large
30 employers and larger trade unions. Sometimes we

1 feel the employee for whom the Act was originally
2 passed for his protection is being forgotten and I
3 give as an example that no longer do we need
4 employees at the bargaining table. Now, we can
5 give you other examples.

6 Now, just on that point, the removal
7 of the requirement that employees be members of the
8 bargaining committee was allegedly on the basis that
9 in small bargaining units some of the employees
10 couldn't afford the time off to go and bargain and
11 negotiate an agreement. It was a burden on the
12 individual employees and it was their attitude,
13 "Well, we pay the union dues, why don't you do our
14 bargaining for us", and any units that want to
15 appear or want to attend, they do, they send
16 representatives, is that not the case.

17 MR. RIGGIN: Well the unions^{with}/which
18 I deal on behalf of my company have no compunction
19 at all in paying their own bargaining committee.
20 United Steel Workers of America and these others
21 unions, certainly the Steel Workers pay the unions.

22 MR. POLLOCK: Yes, but in the small
23 units of eleven or twelve employees that are working
24 in some cases on a piece rate or hourly rate, they
25 are not always treated so beneficently.

26 MR. RIGGIN: Well the union is
27 representing these people and has the high privilege
28 under the Act of exclusively bargaining for them, I
29 would respectfully suggest that they should open
30 their purse strings and indemnify an employee's lost

1 wages so that he can be at the table where the
2 bargain is being made on his behalf.

3 THE COMMISSIONER: Well you suggested
4 at the beginning that the primary objection was that
5 it interfered with the communication between the
6 employer and the employee.

7 MR. RIGGIN: This is one of the
8 points.

9 THE COMMISSIONER: Well would that
10 mean that you would support consultative counsels
11 of both parties more or less continuous? That
12 would establish an even closer communication.

13 MR. RIGGIN: I'm not sure that I
14 follow you there Mr. Commissioner, but I was speak-
15 ing about communications surrounding renegotiations
16 for renewal of a collective agreement.

17 THE COMMISSIONER: Exactly, but you
18 said that the present method rather prevented that
19 easy communication between an employer and employee
20 which is desirable. What did you mean by the word
21 "communication"?

22 MR. RIGGIN: If we are bargaining
23 with a trade union for a collective agreement and
24 there are ten or twelve employees of the bargaining
25 unit sitting there listening to the arguments back
26 and forth, the debate regarding the issues, those
27 employees are going to go back and tell their fellow
28 employees what went on.

29 THE COMMISSIONER: Is that what you
30 meant by "communication", between the employees

1 themselves and not with the employer?

2 MR. RIGGIN: I'm sorry I misunder-
3 stood you. Yes, certainly employee communications.

4 THE COMMISSIONER: But don't you
5 think they're able to look after themselves?

6 MR. RIGGIN: Our experience has
7 been that the trade union does not always tell the
8 bargaining union membership what is happening in
9 negotiations. Now that was the last point that I
10 intended to raise in these preliminary discussions
11 and we would be happy to attempt to answer any
12 questions that you may have. Thank you gentlemen.

13 MR. POLLOCK: Now turning to the
14 third page of your submission you suggest under the
15 heading of No.2 that a strike should not of itself
16 mean a close down of the business operation of the
17 struck premises. 'In this regard, "the relative
18 economic strength of the particular parties" is a
19 very real issue.' I appreciate that those words
20 may have been mine at one stage and now they are
21 yours and I would like to know what you mean by
22 them "relative economic strength of the particular
23 parties is a very real issue". What is the
24 economic strength of the employer, and what is the
25 economic strength of the union? What are the
26 factors? Let me say at this stage that it may be
27 difficult for you to speak on behalf of the Board
28 of Trade because you may not have considered.
29 That question you may have considered but we will
30 appreciate that if you want to give your own opinion

1 and if you preface your remark by saying "this is my
2 own opinion" that you don't have to worry about going
3 back and taking something from the Directors.

4 MR. ALDEN: I would think that
5 probably what is intended there with the strike an
6 employer suffers loss of profits and the employee
7 suffers loss of wages. If the employer can keep
8 operating the strike is not going to be so effective
9 and similarly if the employees find other work it is
10 not going to pinch them too hard, and I think this
11 is what is meant by the relative economic strength
12 of the particular parties, whichever one suffers is
13 more likely to give in to the other.

14 MR. POLLOCK: Well inherent in that
15 I think you have to add to the employees ability to
16 get other work, the size of the union and whatever
17 welfare or benefits that they can get from the union.
18 So inherent in the economic strength is the economy
19 of the country I suppose in the sense as to whether
20 there is full employment or partial employment, the
21 alternate employment opportunities, the availability
22 of the work force for the employer which is a
23 corollary of that, the size of the employer, his
24 subsidiaries, his method of operations and whether
25 it is highly automated and all these other factors.
26 So that it is a question for the legislature or the
27 regulating power not to affect the power of any of
28 those other variables. Is that your position, that
29 if they are weak economically they remain weak
30 economically and it is a question of just laying the

1 ground rules down and saying "all right, if you
2 want to come in and fight in this arena you may
3 fight a heavyweight or you may fight a middleweight,
4 but these are the rules and everybody wears the same
5 size glove".

6 MR. ALDEN: I would like to speak
7 of economic areas. They are confined to individual
8 situations and individual problems and I think it
9 would be pretty difficult to generalize.

10 MR. POLLOCK: But it is not your
11 conception of the Labour Relations Act or collective
12 bargaining that you ought to try and balance off the
13 two parties by handicapping one who is economically
14 stronger than the other.

15 MR. ALDEN: No.

16 MR. POLLOCK: You take it the way
17 you find it, is that the position?

18 MR. ALDEN: Yes.

19 MR. ROGERS: It would be ^{an} extremely
20 difficult thing to do to be able to say we'll have
21 to add a few more ounces to your gloves. You
22 have to pretty well take the situation as it stands.
23 The parties that bargain under those circumstances
24 and the long standing relationship over many years,
25 they fully understand their respective positions
26 when they go into the arena to work out the bargain
27 that ultimately they will arrive at and if somebody
28 steps in like the referee and adds a third glove
29 to someone as it were, I think that is giving one
30 side or the other an unfair advantage or disadvantage

1 as the case may be. And the parties haven't
2 bargained with that in mind. If they really knew
3 what was ahead of them in terms of some outside
4 assistance they might have bargained differently.

5 THE COMMISSIONER: Has the develop-
6 ment of labour legislation in the past hundred years
7 been in the direction of putting them in primitive
8 conditions or modifying those conditions?

9 MR. ROGERS: No, I think we have
10 pretty well rid ourselves of that to the extent that
11 it is possible. If we can do it any more we are
12 all for it. We think that we have arrived at a
13 pretty civilized state with the employees' right
14 to enforce the employer to bargain.

15 THE COMMISSIONER: There is no doubt,
16 but I think with every change there has been that
17 view expressed that we have reached now the ultimate
18 in desirability and there is no further need of
19 modification.

20 MR. ROGERS: Well if there are any
21 other techniques available or can indeed be conceived
22 which might lessen the jungle then I think we would
23 want to take a pretty good look at them. But we
24 are reasonably knowledgeable in this field and we
25 are always searching for new techniques and advices
26 that will eliminate the cost of the ultimate strike.
27 Because it is a cost to the country.

28 THE COMMISSIONER: Well in that view
29 the weaker man is at the mercy of the stronger,
30 regardless of all the due considerations.

1 MR. ROGERS: This is true.

2 THE COMMISSIONER: I'm not suggesting
3 that it is an evil at all but that is the result.

4 MR. ROGERS: It is difficult to
5 determine sometimes who is the weaker and who is the
6 winner or the loser. The International Steel Workers
7 when they take on the Steel Company of Canada you've
8 got a pretty fairly matched consistence and when the
9 steel workers take on an employer who has forty
10 employees advocating some small unit of steel
11 obviously they are mismatched.

12 THE COMMISSIONER: And then when a
13 strong employer takes on a small union that isn't
14 associated with a powerful union then the reverse
15 condition exists.

16 MR. ROGERS: And I suggest, and this
17 is without any careful study at all, that by and
18 large the growth of unions has been such that they
19 have developed the strength and know how to take on
20 the big employers, and I think probably it is the
21 small employers who are generally represented by our
22 Board who face the UAW's and the steel workers.

23 With their organization and their
24 expert people, I think that the employers are the
25 weaker of the pair when it comes to bargaining.

26 THE COMMISSIONER: I suppose it
27 depends in part on the real purpose or object we
28 have as having all of this economic and social life
29 lead to a certain kind of civilized community. That
30 is the end of it but what do we seem to establish?

1 MR. ROGERS: Well you might add
2 that the general Canadian economy or the inter-
3 national world economy that it is a bit of a jungle.
4 There are price wars and constant competition which
5 results in somebody going down and out through
6 bankruptcy or otherwise—they are swallowed up by
7 their competitors. This is in one sense savage
8 but it is the way our economy works, but it works
9 pretty well I think because the stronger people are
10 those who contribute most to the strength of our
11 economy.

12 THE COMMISSIONER: No doubt there
13 have been tremendous contributions made in industrial
14 advances. Do you think it is possible to go too
15 far in that respect?

16 MR. ROGERS: Well I am concerned
17 about too much regulation. If the employer has to
18 go through a book of rules every time he wants to
19 have a relationship with his employees to determine
20 what he can say to them, some employers are bothered
21 about this and during the period of organization
22 they are concerned with how far they can go in
23 saying whether they like or don't like what is going
24 on. Some of them feel very much hampered in their
25 ordinary day to day communications with the employees.

26 MR. HAMILTON: Sir, in fairness to
27 every employer and trade union I think we work from
28 the thesis that no one is going to win in a strike
29 situation. I don't think, except in those isolated
30 circumstances perhaps where there is some doubt as

1 to whether there is representation rights, for
2 example, where there is support that may have arisen
3 in some peculiar arrangements, but with those
4 exceptions I think both parties, the employees and
5 the trade union, and the employer are well aware
6 that there is going to be some loss once the strike
7 occurs.

8 THE COMMISSIONER: Well that depends
9 on the standards with which you measure what has
10 been achieved. But do you think that it ^{would} possibly
11 make things more intelligent and more desirable that
12 you would get rid of the vocabulary of war.

13 MR. HAMILTON: Well look at the
14 types of criterion that were mentioned before, it
15 is difficult to conceive of a magic formula by which
16 the referee would work.

17 THE COMMISSIONER: I agree with that
18 but I'm talking about the language you used when you
19 spoke about victory or defeat. Are those proper
20 terms when you are working here under the protection
21 of your own community?

22 MR. HAMILTON: I'm sorry if I used
23 those terms, sir. I'm saying that there is going
24 to be a loss on both sides by the strike occurring.
25 I'm not talking about victory or defeat as such. I
26 am saying that both parties are aware that there is
27 going to be a loss and the ultimate test of the
28 economic strength. If you will, in answer to the first
29 question that started this area of discussion, I
30 think no one is looking forward to the relevant

THE COMMISSIONER: Well there may be certain immediate loss in terms of money but ultimately that may not prove to be a loss. It is pretty hard to say, you have to give it some extension of time to determine what the ultimate result is.

MR. HAMILTON: In looking at the strike, sir, I think at some stage there has to be some test on the sincerity of the bargaining posture that is taken. In other words there's a question of the employers' ability to offer more if you will from his point of view, and at some stage or other there is the criterion of the test that is available and he has to face that test, and it indicates his sincerity if you will in assessing his own problems as to what he can offer, and so from the employees' point of view. We are not seeking to advance just one interest, I think there are two interests to be assessed, in fact three because once you look at the relationship during the strike, sir, I think you are also obliged to look not only at the relationship between the trade union if you will and the employer, but also the relationship that exists between the employees and the trade unions should you consider anything as I think was mentioned before, the right to work or the availability of employment and so forth. Because under many of the trade union

1 constitutions there are sanctions and penalties
2 that deal with those areas where an employee may
3 act without regard to the trade union or in a manner
4 that is detrimental to the interests of the trade
5 union. So that if he were told that he for example
6 was not to come into work by the trade union, then
7 there are some sanctions within the constitution of
8 the trade union itself that would have to be taken
9 into account. So it is a tripartite if you will sir,
10 and not just a singular one.

11 THE COMMISSIONER: I'm trying to
12 understand how the public is concerned with the
13 individual. But I don't know if that would have
14 any great effect upon the employer.

15 MR. HAMILTON: Well, I merely raise
16 this, sir, because I think the availability of the
17 sanction indicates a degree of control that exists
18 between the employee and the trade union, sir.

19 THE COMMISSIONER: That may be.

20 MR. POLLOCK: Well in this adversary
21 system that exists where one side advances/and the
22 other side advancesits interest and hopefully by
23 this thesis you arrive at an agreement. If you
24 don't then I assume that you go on strike and I
25 don't think there are lockouts any more although
26 some perhaps may develop in the near future. If
27 there are strikes against imbalanced parties or in
28 areas where a technical mistake may turn into a
29 strategic blunder in the sense that you thought you
30 were a little bit stronger than you were and the

1 employer realizes that you weren't strong at all or
2 vice versa, and one of the parties can do without the
3 other such as recently occurred in the Toronto news-
4 papers where one of the strongest unions craftwise
5 has really lost that strike, if I can use the
6 vocabulary of winning and losing for the moment.
7 Have you any record or evidence of employers being
8 put out of business by a strong trade union who has
9 taken the position that perhaps the employer feels
10 is unreasonable and a strike occurs and he just goes
11 by the board?

12 MR. HAMILTON: If I may answer that,
13 Mr. Pollock, it is difficult to place the responsi-
14 bility as simply as that because of course throughout
15 some of the textile industries for example, the
16 resultant strikes in some circumstances that have
17 occurred or the improper bargain that was made in
18 order to avoid a strike if you will has lead to a
19 substantial reduction of certain elements of the
20 textile industry.

21 MR. POLLOCK: Are those only the
22 weak, the sort of weak sisters of the industry, the
23 people who are on the periphery or the fringe runners
24 that have been eliminated, people whose operations
25 are uneconomic anyway and the only way that they can
26 probably get by is by having some part of this
27 inefficiency subsidized by lower than standard work-
28 ing conditions and wages?

29 MR. HAMILTON: It is difficult in
30 an individual case to separate that relationship as

1 such but as I recall there were some circumstances
2 and I'm not sure of the specific employer involved,
3 where people have been placed in the position that
4 they were not able to operate on the basis of that
5 kind of settlement, with the result that the opera-
6 tions were discontinued.

7 THE COMMISSIONER: Have you anything
8 specific in that regard?

9 MR. HAMILTON: I'm sorry, sir, since
10 we were dealing with the Toronto Board of Trade we
11 didn't come forward with anything specific as such.

12 THE COMMISSIONER: Because textiles
13 generally all over America as well as England have
14 been under the old regime, have been forced out of
15 business but not because of labour troubles.

16 MR. HAMILTON: Yes sir I think it
17 is a combination of many problems and I didn't seek
18 to get into an economic discussion in trying to
19 separate which ones may have caused anything here.

20 MR. ALDEN: It is pretty hard to be
21 specific in this area. For example you may have a
22 company that manufactures several products, and the
23 products where there is a high labour content will
24 be more seriously affected by higher labour costs.
25 Now the company may decide that it is not economic
26 to continue manufacturing that particular product
27 and yet the company stays in business by manufacturing
28 other products. Also it is not only the direct
29 labour cost involved with your own employees but it
30 the labour cost of another supplier who may be sending

1 around materials to you. So while this specific
2 area where a company may be forced out of business
3 because of high labour costs, that is only part of
4 the over-all picture and that is why it is hard to
5 be that specific.

6 MR. HAMILTON: And it is probably
7 not going to happen during the continuation of the
8 strike. In some of those circumstances I would
9 presume that this has been the experience that
10 settlement will be made, so it is difficult at that
11 stage to say that one came from the other because
12 they may not occur^{at} precisely the same time. Yet
13 the consequence of attempting to liquidate for
14 example a business that is on strike is well nigh
15 impossible. So the bargain is then cast in the
16 way of the employees of the trade union and then
17 the efforts made to reduce that element of the
18 business as Mr. Alden suggested, or alternatively
19 discontinue it.

20 MR. POLLOCK: It is easier I suppose
21 to determine when a union has been put out of
22 business as far as a plant is concerned than when a
23 plant has been put out of business. I suppose the
24 lines are more clear cut. The employer just doesn't
25 take them back and their strike continues forever
26 even though in effect the employer is back to full
27 employment already and has replaced them.

28 MR. ROGERS: You are thinking again
29 of the Toronto newspapers but I don't suppose there
30 are too many examples like that.

1 MR. POLLOCK: Well I can think of
2 Tilco Plastics or any strike that has been defeated
3 in the sense that the union has not concluded an
4 agreement and the company has operated and the union
5 then subsequently becomes decertified because it no
6 longer enjoys the majority support of the employees
7 because new employees have come in.

8 MR. ROGERS: They may have mis-
9 managed the strike in the first place.

10 MR. POLLOCK: Well I'm not trying
11 to put fault at anybody's doorstep but I am just
12 saying that it is easier to determine.

13 MR. ROGERS: Well the loss may have
14 been due to loss of membership rather than the strike.

15 THE COMMISSIONER: Or the dissolution
16 of the union.

17 MR. ROGERS: It could be one or the
18 other, yes.

19 MR. POLLOCK: On page 4, No.4 "the
20 alternative to a prohibited strike." This is of
21 course in reference to public service areas where
22 strikes ought not to be permitted. You suggest
23 that the Chairman of an arbitration be appointed by
24 the government, and that the establishment of this
25 type of arbitration ought to be again a government
26 responsibility. What do you think about the
27 establishment of a permanent type of tribunal in
28 either of these two circumstances, (a) where you
29 already said that these particular areas are going
30 to be covered by compulsory arbitration, and we

1 have done that I think as far as the policemen and
2 firemen and hospitals are concerned; and (b) if you
3 expand those three into another area that the
4 Lieutenant Governor in Council can declare that a
5 particular industry or utility or whatever you have
6 that has a strike there/has caused a public emergency
7 or some part of an emergency, having a Board
8 established all the time for references of the first
9 kind and the second kind to this tribunal. What do
10 you say about that, rather than an ad hoc arbitrator
11 every time something comes up?

12 MR. ROGERS: Well one of the problems
13 we are facing right now in this province, the Depart-
14 ment of Justice in Ottawa through a recent amendment
15 which they effected the Judges Act, has made it
16 very difficult if not impossible to have the use of
17 the County Court or District Court Judge in the
18 province as arbitrators and conciliation board chair-
19 men. While there are discussions going on and
20 Justices indicated they are prepared to work out
21 something, at the moment we are up in the air as to
22 what is to be done. But in that group or category
23 of District Court Judges we have built up a pretty
24 strong corps of first rate able conciliation board
25 chairmen. Now it appears as if we are losing them
26 and there is left really a very small number of
27 generally speaking university professors and
28 economists who have the confidence of both management
29 and unions in this particular field. And I am
30 speaking personally here, I am concerned with bringing

1 about a group which can be used in this field in
2 addition to, say university law professors and
3 economists who are presently doing it. One way to
4 do it I suppose would be to have some kind of
5 permanent tribunal in which the members would
6 receive some remuneration and that they would from
7 time to time

8 MR. POLLOCK: I would hope con-
9 siderable remuneration if you^{are} going to get people
10 of any calibre.

11 MR. ROGERS: Well it depends whether
12 it's full time or part time.

13 THE COMMISSIONER: Well don't you
14 think it ought to be full time?

15 MR. ROGERS: I would think perhaps it
16 should but again it depends on the amount of time
17 that they are going to be called on to perform this
18 kind of work. I would think that you would want
19 more than one person.

20 THE COMMISSIONER: Well I don't want
21 to use names by prejudicing anyone but take a labour
22 tribunal of the same quality as say the Supreme
23 Court, with Commissioners as they have them in
24 Australia, who become very, very efficient in dealing
25 with balances that are bound to be brought into
26 consideration when any dispute is settled.

27 MR. ROGERS: Well, short of that
28 kind of calibre it would be very difficult for me
29 to resist that suggestion.

30 THE COMMISSIONER: Well I think that

1 is what we have to look for in this country or every
2 country, leadership of high quality.

3 MR. ROGERS: And some guarantee of
4 substantial remuneration that may attract people to
5 this kind of work but I'm afraid without that sort
6 of thing that we are going to drift and there aren't
7 enough people and having taken out the County Court
8 and District Court Judges who are qualified, there
9 are going to be very serious problems erupt in this
10 province because there is a shortage of personnel.
11 You are left in some cases with well "he'll do and
12 we'll hope it will work out all right" and so on and
13 you are taking a risk that ^{you} /shouldn't have to take in
14 this area. But there are pattern thinking contracts
15 coming up for renewal from time to time and they are
16 important.

17 THE COMMISSIONER: I might say this,
18 that we had the privilege of observing some of the
19 work in Australia and the only feature that is
20 relevant at this moment and which I will mention is
21 this; that in the course of time it has been brought
22 about that that training in office has been such as
23 to create in the minds of an employer a preference
24 for one who came up through the labour ranks and
25 conversely through the other it was through the
26 management ranks. It ultimately results in the
27 original capacity of the individual to grasp the
28 significance of the conditions that he has to deal
29 with but that is the result of putting them into
30 action and taken altogether there is very considerable

1 satisfaction in that country with what they call
2 Commissioners, and the judgment that they form and
3 which are obligatory. There is in that case
4 generally an appeal to the larger tribunal with
5 which they are associated, but it is rare that their
6 decision in a matter of judgment of that sort would
7 be reversed.

8 MR. HAMILTON: Sir, is that confined
9 to wage and economic issues as such?

10 THE COMMISSIONER: Their concern
11 with wages is to establish minimum wages and above
12 that it is free discussion and free bargaining but
13 if they do determine the conditions of work, that is
14 done by a tribunal-and vacations.

15 MR. HAMILTON: And according to
16 seniority, sir.

17 THE COMMISSIONER: Yes.

18 MR. HAMILTON: Because this is one
19 area that they pose some consideration because
20 variance of seniority and other peculiarities of the
21 operation it would have to be assessed in consider-
22 ing whether or not a permanent format may not yield
23 the same kind of uniform treatment so that the kind
24 of uniform treatment/ that we are dealing with-the
25 hospital or police force or firemen's department-it
26 may need some individual treatment in a particular
27 way because of the number of captains or the number
28 of supervisors or the layout of the work situations
29 as such.

30 MR. POLLOCK: Well, I think the

1 Australian experience is certainly different in many
2 respects. The question is, how many of those
3 differences are significant differences and which
4 are the ones that contribute to its success and
5 which will contribute to the weakness/^{if}you are going
6 to import that. On answering the question of
7 flexibility many of these terms and conditions are
8 agreed upon by the parties and in many cases the
9 whole award is agreed upon and it is considered by
10 the Board and it is either registered as an agreement
11 or it is considered a consent award, and then they
12 may consider only 10% of some other type of award
13 where the parties are in disagreement over one little
14 point. Outside of holidays and work
15 hours where there is considerable uniformity such as
16 forty hours a week and three weeks annual vacation
17 and the usual provisions as far as long service leave
18 which is something that is very appealing, which is
19 sabbatical after so many years of work, the other
20 conditions tend to be standard because they are
21 appealing that is all.

22 MR. HAMILTON: To a great extent
23 the negotiations that take place in a given area
24 involving hospitals for example are based on some
25 of the criterion that have been established by other
26 arbitration boards that preceded. The difficulty
27 that comes up is the availability and the degree of
28 knowledge that is needed to cope with what may be
29 to an arbitration board or some independent tribunal
30 a very minor issue. But nevertheless the significance

1 of it in the application of seniority or the
2 relationship of numbers of personnel in a particular
3 department are the kinds of considerations that tend
4 to slide when you get into the major negotiations of
5 the working conditions and so on. These are the
6 areas that I think cause the most concern when one
7 deals with hospitals and other places.

8 MR. POLLOCK: Well I think that is
9 probably a correct statement and probably a support
10 for a more permanent type of tribunal which has more
11 opportunity to study and consider all these factors
12 and perhaps supported by some type of secretariat
13 or research so that your arguments made one day aren't
14 wasted the next time because you're sitting in front
15 of another fellow, and perhaps there can be some of
16 these considerations as familiarity with the problems
17 becomes greater, some of these considerations can be
18 dealt with a little bit more effectively and reason-
19 ably. Everybody understands hours of work and
20 wages but they may not understand something else,
21 but if you were exposed to all these other things
22 long enough it doesn't take long I suppose, until you
23 become familiar with those as well.

24 THE COMMISSIONER: There is another
25 feature there that I think you might consider; it
26 seems to me to have great merit here; that is
27 associated with the tribunal of ten or twelve
28 commissioners. Now these are superior men, and each
29 one has allocated to him a number of industries and
30 primarily he is concerned with those industries and

1 disputes within them; he is the man who is called
2 first on the scene. He may sit with what you might
3 call a full court but he becomes thoroughly familiar
4 with that group with which he is concerned and I
5 don't think there can be any doubt about the mastery
6 that that course of action will lead to. In assuming
7 capability of sound judgment and proper evaluation of
8 the factors, it strikes me that that is the way to
9 get the men we are thinking of when we talk about
10 arbitrators of that sort.

11 MR. ALDEN: Are you talking now sir
12 about the broader aspects. You mentioned commissioners
13 or that a commissioner might be assigned to a
14 particular industry.

15 THE COMMISSIONER: Well we have what
16 we will call the labour tribunal which is composed
17 in the Commonwealth of Australia say of three judges
18 in effect and there is the principal and two deputies.
19 Then you have let us say twelve commissioners who are
20 on a more immediately applicable course of action.
21 That is to say you as a commissioner will have a
22 dozen industries allocated to you and that is going
23 to be your primary field, and you will be charged
24 with primary responsibility for handling questions
25 that arise there and may lead or that do lead to
26 dispute and each one has this allocation. But they
27 are not limited to that. They are members of the
28 total tribunal and in that way they develop these
29 very capable and efficient administrators.

30 MR. POLLOCK: I think your question

1 was related to how broad are we talking about in
2 Ontario as to the coverage of the industries.

3 MR. ALDEN: Yes, I was thinking of
4 the original AB as I understand it and I just wondered
5 if we were getting into the second part of it now.

6 MR. POLLOCK: Well in Australia now
7 all we are saying is that it covers all the industry
8 and there is not too much difficulty in taking that
9 and putting it into particular industries, if there
10 is going to be a question of limitation. There is
11 still enough requirement for specialization within
12 the handful of industry that are now probably con-
13 sidered to be non-strikable if I could use that term.

14 THE COMMISSIONER: But that is the
15 way you develop men and it is come so too, in many
16 cases where members of the bar are not permitted to
17 be present at any arbitration. Well that does result
18 in developing first rate advocates from labour ranks
19 as well as from employers. They know what they are
20 talking about and they are men who have some natural
21 ability in setting forth views and making contentions.

22 MR. ROGERS: Could I ask, sir, did
23 you get some explanation why members of the bar are
24 not permitted to attend?

25 MR. POLLOCK: It is too costly, you
26 and I are practising in the wrong jurisdiction.

27 THE COMMISSIONER: Well I think the
28 real issue is that they raise too many technical and
29 subtle questions.

30 MR. ROGERS: Then the idea then is to

1 take two and a half years of law and go right into
2 this thing.

3 MR. POLLOCK: That is as a matter of
4 fact a practise that is part of this training, they
5 will go through a law school and not be called to
6 the bar. It is a question of trying to avoid the
7 cost of Queen's counsel and juniors and all these
8 other people in the bar that if people want to get
9 trained they can get trained but they don't get any
10 legal recognition costs.

11 THE COMMISSIONER: Well it seems to
12 me that so far from being silly it is a first class
13 measure and it leads to this, why not have a regular
14 course of training for arbitrators, giving them
15 certain necessary accomplishments or attainments
16 in the way that a County Court Judge is trained and
17 goes on the bench. He sees the contrary contentions.

18 MR. ROGERS: But what better training
19 than a course in law?

20 THE COMMISSIONER: Well I'm not
21 criticizing courts of law at all. I would give
22 a training but I wouldn't limit it to law. These
23 arbitrations-you must know something about matters
24 other than law and find that primarily they are not
25 law at all, they are social considerations, the con-
26 siderations of economics.

27 MR. ROGERS: You were dealing with
28 people who are sitting as commissioners but I was
29 concerned with the remark that you said that indicated
30 to me that members of the bar can't appear.

1 MR. POLLOCK: In some states they
2 can't, they are precluded from appearing.

3 MR. ROGERS: Well I was concerned with
4 what effect it would have.

5 THE COMMISSIONER: Well it may be an
6 unreasonable prejudice that they might raise some
7 subtle points, that they would be raising-they wouldn't
8 be understood, and sometimes they carry it too far.

9 MR. ROGERS: It was suggested here
10 fifteen or twenty years ago by some unions that
11 lawyers should be kept out of labour negotiations.

12 THE COMMISSIONER: I am not saying
13 that I approve of that at all, because we have heard
14 enough from lawyers in Ontario to know that they have
15 mastered more than purely a legal field.

16 MR. ROGERS: Of course this isn't a
17 brief on behalf of the law association.

18 MR. POLLOCK: We will provide that you
19 can have as many lawyers appearing as you would like
20 but you won't have to pay them any money. Turning
21 now before we get into the examination of the section
22 on picketing, perhaps we could talk on page 5 and item
23 "No.6 tactics, other than picketing, available to the
24 parties." You were not going to touch their inherent
25 economic qualities that they come to this struggle,
26 then we have to look and see what other type of
27 regulation we can put on them to either limit the
28 aspect of the struggle or limit the size of the army.
29 I would like to talk in terms of warfare for a few
30 moments.

1 THE COMMISSIONER: I have no objection
2 to that at all, I think it is the second stage, in my
3 view.

4 MR. POLLOCK: You suggest in the first
5 part as far as boycotts are concerned that there are
6 many innocent victims of a dispute who are in no way
7 responsible and are without adequate remedy. It is
8 suggested that if you are a source of market for the
9 struck employer in the sense that you are his outlet
10 into the commercial enterprise of a manufacturer into
11 the course of commerce, then you are assisting him
12 in carrying on this dispute. You are aiding the
13 enemy in two ways perhaps. One, you are providing
14 him, and you are not innocent in this respect. You
15 are providing him with a market and profit. You
16 are also providing him with or you are providing
17 yourself, I should say, with products that have been
18 produced by him perhaps at allegedly sub-standard
19 wages or under poor conditions, then you are the
20 beneficiary of those poor conditions. As the labour
21 position develops it looks that that is their attitude
22 towards boycotts. It may not be effective only to
23 stop the manufacture of them or to reduce the manu-
24 facture of them or if they are prepared to manufacture
25 them at the plant out in some industrial area we want
26 to be able to stop them from being put into the chain
27 of commerce. What is your view on that?

28 MR. HAMILTON: In some alternative
29 situations take the Heather Hill Appliance case where
30 it wasn't a question as I recall it of seeking to

1 advance the Toronto newspapers' profit margin at
2 all. It was a question of staying in business from
3 the appliance owner's point of view and the fact that
4 he perhaps, one out of many other appliance dealers
5 in the City of Toronto, was going to be discriminated
6 against and effectively have his business interfered
7 with.

8 In dealing with the issue of product
9 of course, the appliance, again the retailer for
10 example would have already acquired the product at
11 a previous time in many circumstances not exclusively
12 perhaps but in many circumstances he has paid for
13 the product and all he is trying to do is convert it
14 from an inventory item into a sale.

15 MR. POLLOCK: Well let us take a
16 different example from Heather Hill and look at
17 Hershey's at Woodstock, where you have a more direct
18 situation and you have, I'm assuming you had a
19 primary dispute at Deacon Brothers clothing and that
20 an outlet for Deacon Brothers clothing is Hershey's
21 at Woodstock and I think there was no dispute
22 originally, but assuming there was a strike at
23 Deacon Brothers and Hershey's is the retail outlet
24 and the employees of Deacon Brothers go to Hershey's / and
25 say "don't buy any more Deacon Brothers clothes while
26 we are on strike" and he says "no, I'm going to buy
27 some more" and they say "all right if you're going
28 to sell Deacon Brothers clothes we are going to
29 picket your premises with signs saying 'Attention
30 shoppers-do not buy Deacon Brothers clothes here,

1 their plant is on strike, buy Shiffer -Hillman'"
2 or some such other brand. That type of picketing is
3 in the United States
4 primary picketing / and directed to the product that
5 is on strike. It is not an unrelated type of inter-
6 ference as was Heather Hill because the Bad Boy stores
7 didn't sell the Telegram, it wasn't a commercial
8 enterprise but it was a more tenuous chain. Do you
9 draw any distinction between those two situations?

10 MR. HAMILTON: I don't think there is
11 a distinction if you're concerned with the balance
12 of rights here. Here you've got a retailer in a very
13 small way who is subject to interference from, I don't
14 know how many lines a retailer might carry it might
15 be three or four hundred lines, he is subject to this
16 kind of threat and inducement at any point of time
17 with respect to any one of those lines. Now ^{he} is in
18 effect being asked by the one party or another to
19 judge the dispute, and the result of his judgment
20 may be to put himself out of business. Now I would
21 think that is improper to have the area of original
22 dislocation if you will, it is throughout
23 the country affecting people who have no more interest
24 than to buy a product and sell it to the people that
25 want to buy it.

26 MR. POLLOCK: Well they have got an
27 interest. They are not completely innocent, it is
28 within the contemplation of anybody who gets into a
29 contractual relationship with an employer that he
30 may be on strike some time. He also, or it is within
his interest I suppose to have Deacon Brothers charge

1 the lowest possible prices because then he can sell
2 more of those particular clothes. But as long as
3 the impact of the picketing is directed to the
4 particular article that is in dispute

5 MR. HAMILTON: He is not responsible
6 for the dispute at all in its original form.

7 MR. POLLOCK: He is the beneficiary
8 of the dispute. If the company or manufacturer wins
9 the dispute and the rates remain to be low then his
10 wholesale price is lower too. If the union wins
11 the dispute then the labour costs go up, then his costs
12 from Deacon Brothers goes up and his price has to go
13 up.

14 MR. HAMILTON: In fairness that is a
15 pretty indirect beneficiary because there are many
16 other considerations that are going to apply including
17 the availability of any number of alternative
18 suppliers. But in effect I suppose it is a question
19 of divide and conquer in that business. It is putting
20 individual pressure on individual retailers and many
21 of them could well be forced out of business.

22 MR. POLLOCK: They are not saying that
23 "we are going to put you out of business, we are asking
24 you not to deal with the enemy" and we are saying "all
25 right if you're going to deal with the enemy we are
26 going to ask your customers not to deal with enemy
27 and not to deal with you."

28 THE COMMISSIONER: Yes but the effect
29 is that the whole business of that secondary man is
30 effective.

1 MR. ROGERS: They just won't buy
2 Deacon Brothers shirts, they won't buy any other
3 products.

4 MR. POLLOCK: Well the philosophy is
5 certainly different in the United States and we must
6 be different people here.

7 MR. ROGERS: Well our laws have gone
8 along different lines in some areas.

9 MR. POLLOCK: Well would you hold the
10 same view if the original plant that was struck was
11 and
Canadian Tire / it was one of the Canada Tire stores
12 that was being picketed and it is only a manufacturing
13 of
aspect / Canadian Tire that is being affected?

14 MR. HAMILTON: Mr. Pollock, you are
15 not just talking about the manufacturer when you are
16 talking about secondary boycotts in picketing, you are
17 also talking about the livelihood of the individual
18 employees and other persons that are dependent on
19 that retailer's availability of maintenance in
20 business. And on behalf of myself and I can't see
21 that those persons should be involved to their
22 detriment in that kind of a judgmental factor by some
23 union or other.

24 MR. POLLOCK: Then you are saying that
25 the picketing ought to be limited not to the primary
26 area of dispute which includes the product that goes
27 out in the chain of commerce and you can't follow that
28 around. It is the geographic location that you have
29 a manufacturing site and it is located somewhere in
30 Northern Ontario that that is the only place that you

1 can picket.

2 MR. HAMILTON: I think for informational
3 purposes that this is correct.

4 MR. POLLOCK: Well for any purposes.
5 But that that company can employ other people to work
6 in the plant and it can bring in some supervisory
7 personnel from other plants that it has in the country
8 and it can make its production through another agency
9 or sub-contractor, it can operate other plants that
10 it has in the province where there is no dispute and
11 the only thing that the union can do in counter-
12 vailing pressure is to picket that one plant up in
13 Northern Ontario.

14 MR. HAMILTON: Yes, this is correct.

15 MR. ROGERS: And support its employees
16 with dues from a very large area.

17 MR. HAMILTON: That of course is
18 where they are certified.

19 THE COMMISSIONER: Would you please
20 say that again.

21 MR. ROGERS: An employer I represent
22 was threatened with an impossible strike supported
23 dues of 22,000 other employees in the area. That is
24 certainly not confining the strike to the employees
25 on their individual dues.

26 THE COMMISSIONER: Well would you
27 consider a more sensible thing or a more politic
28 thing to leave these antagonists naked to fight it
29 out themselves?

30 MR. ROGERS: Well until there is a

1 better way of doing it in the areas apart from the
2 ones that we considered on page 4 - hospitals and
3 that sort of thing.

4 THE COMMISSIONER: I'm including what
5 you call essential industries. You have an employer
6 and employee and that is a business which is of great
7 interest to both parties, and there is a dispute
8 between them. Would you say now we will leave it
9 to those two groups as they are today. If the
10 strikers are bound by cohesion, loyalty and one thing
11 and another they can stop that work. If they are not
12 then they can't. If there is good communication
13 between them they recognize the interest of both
14 sides and the necessity of having two sides in that
15 sense in our basic conceptions of economy, then
16 before they take action at all they will consider
17 the result. But leave them alone, cut them off from
18 all outside benefits and see whether that will not
19 coerce them or tend to coerce them to be more
20 appreciative say of the other man's position and
21 more inclined to bargain or compromise and settle on
22 something that is reasonably acceptable.

23 MR. ROGERS: I'm not sure what you
24 mean by saying "cut them off from outside help".

25 THE COMMISSIONER: Well I would say
26 that there would be no picketing because the purpose
27 of picketing as far as it has been revealed to me,
28 is to, and it won't be admitted except in a few cases,
29 is to coerce or intimidate and for that reason the
30 mass itself has an affect and is a potent factor.

1 Then there is the employment of strike breakers which
2 I think is the most infuriating of all the tactics on
3 the part of the employer to the striking men. Then
4 there is the re-employment of the striking men in
5 other industries to enable them to endure the contest.
6 Now those are all factors that play the immediate
7 role of either the destruction of one or the other,
8 or the acceptance of a compromise.

9 MR. ALDEN: This may almost appear as
10 though it is the law of the jungle when as you say
11 you have the two parties fighting and they are left
12 naked with no assistance.

13 THE COMMISSIONER: But their only
14 power today is to endure. But so long as the doors
15 are open between the parties those belonging to the
16 working force may walk in without any interruption
17 if they see fit. If the appeal is reasonable they
18 will do it and if the appeal is not they won't.

19 MR. ALDEN: Well I think it is our
20 opinion that who best can decide the problem between
21 the parties other than the parties themselves. For
22 example

23 THE COMMISSIONER: Well they can do
24 it there for example if that is your proposition and
25 that is exactly what I am suggesting.

26 MR. ALDEN: You mean that they can do
27 it there prior to the strike or during the strike.

28 THE COMMISSIONER: Of course. I am
29 suggesting that you keep away outside influences or
30 influences that have shown themselves to be socially

1 very undesirable.

2 MR. RIGGIN: What are these outside
3 influences?

4 THE COMMISSIONER: Well take the
5 employment of strike breakers. And if there is the
6 same loyalty between the employers, that is the
7 employees and the labourmen you wouldn't do that.
8 In Australia they never think of such a thing. They
9 have known it in fact occasionally, but it is not
10 part of the stock in trade of either the union or
11 the employers to resort to either picket lines or
12 employment of strike breakers.

13 MR. ROGERS: Do you include in the
14 term strike breakers those employees who want to
15 continue?

16 THE COMMISSIONER: No I don't, I
17 say a strike-breaker is an outside person.
18 As far as the personnel of the force is concerned
19 they are free to do anything they please, they can
20 go back and forth or they hold together.

21 MR. ROGERS: Well you will get
22 situations where part of the work force is prepared
23 to stay on and does in fact stay on. It may not be
24 possible to carry on effectively with just part of
25 the work force-you've got to bring in what you call
26 strike breakers.

27 THE COMMISSIONER: Well that is true
28 but all I say is that the factors that will control
29 will be the factors limited to those two parties or
30 those two groups. Now we use the word "company" but

1 imagine the shareholders behind there looking upon
2 the employees. You are facing two groups and it is
3 only because of the law that you can deal with those
4 shareholders as a unit just as you have a union here.

5 MR. HAMILTON: What is the availability
6 of alternative employment as far as the strikers are
7 concerned?

8 THE COMMISSIONER: Well that is a
9 factor too that can be refused, prohibited.

10 MR. HAMILTON: How could it be
11 implemented as such?

12 THE COMMISSIONER: For the first -
13 in the first place they could use their privilege to
14 continue as employees under section 12 of the Labour
15 Act. Moreover if they take other employment you can
16 replace them by taking into your stock a person who
17 is willing to work.

18 MR. ROGERS: Does that include self-
19 employment such as farming? A good many mining
20 people outside of Toronto revert to farming or can
21 revert to farming very easily and dig potatoes all
22 summer.

23 THE COMMISSIONER: There's nothing to
24 prevent it. Can they farm?

25 MR. ROGERS: Oh yes.

26 THE COMMISSIONER: Well I think that
27 he could go on his own farm and weed the garden if
28 he wanted to and put something on the potatoes to
29 keep the bugs away.

30 MR. RIGGIN: Well what is the difference

1 Mr. Commissioner with all respect, between the
2 employee who goes back to his farm and thereby earns
3 his upkeep?

4 THE COMMISSIONER: Well he can go
5 back to his home and live there. You wouldn't
6 prevent him from doing that. Then he is home and
7 he sees to his garden and he can't contribute a great
8 deal that would in any way affect the employer. He
9 doesn't stay on his farm, why, because it isn't
10 enough for his upkeep.

11 MR. ROGERS: It may not be quite as
12 much as he would like.

13 THE COMMISSIONER: Well then you
14 could say that he shouldn't eat too much while he's
15 on strike and wear down his physical condition to
16 resist.

17 MR. HAMILTON: Well looking at the
18 alternative you are saying as I understand it sir,
19 how can you tell a man he is not free to work else-
20 where?

21 THE COMMISSIONER: I don't tell him
22 that. I say if he does that he loses on it. He
23 will cease to be an employee because he has continued
24 as an employee under the statute. You can't dismiss
25 a man because he is on strike or merely because he
26 is on strike. But that can be withdrawn from him.
27 It is something given and it can be taken away.
28 More, if he goes there and loses that then he can be
29 replaced because theoretically that working force is
30 never reduced in a strike. It hasn't been developed

by the courts to the extent / ^{chat} seems to be open but
the fact is that the working force by virtue of that
sub-section is maintained as employees.

MR. HAMILTON: Then you are again into
the relationship between the union and the employees
sir. One of the other considerations is the relation-
ship between the union and the employee.

THE COMMISSIONER: Well I haven't
touched that yet.

MR. HAMILTON: The relationship there
is whether or not he can continue to be employed by
continuing to work.

THE COMMISSIONER: Well that may be
but I am concerned with your relation to the employee
because those are the matters that actually come up
in the course of a strike.

MR. RIGGIN: One thing I suggest you
should bear in mind Mr. Commissioner is that even
though this employee under your premise would lose
his status as an employee because of taking work
elsewhere, the practicalities of the matter are that
many of these people are skilled people with long
service with an employer and when that strike is over,
^{is} whether it/because a collective agreement is made or
because the union decides to pull out or not, the bulk
of those people, if there has been a good working
relationship, are going to want to come back to that
employer and moreover he is going to want them back.

THE COMMISSIONER: All right, they
won't seek the other employment.

1 MR. POLLOCK: In your situation they
2 are perfectly free if they want to come back, to come
3 back if the employer wants to take them back. They
4 are not like new employees.

5 MR. RIGGIN: I am saying that a work
6 stoppage has gone on for a long time. The point I'm
7 trying to make is that you say the employer should not
8 operate during a strike, that is if I understand you.

9 THE COMMISSIONER: Let us keep straight
10 on this. I say that it is within the power of the
11 union to keep that work closed, if there is the
12 solidarity maintained that they are looking for,
13 that is all. But that may not be so. It may be that
14 half that union will keep on working. They are not
15 intimidated by a picket line and they will go to work
16 if they think the strike is unjustified.

17 MR. HAMILTON: Well what is going to
18 implement the rules of the game? As to when somebody
19 is considered to have quit and a replacement hired.

20 THE COMMISSIONER: Well I think easily
21 you could have that accomplished by a tribunal. We
22 must pay for these things and if you have what I
23 would conceive to be a superior tribunal with the
24 Commissioners, then you are in a position to police
25 that with your own people.

26 MR. HAMILTON: But, sir, aren't you
27 doing to an extent at least indirectly, if you start
28 judging the effectiveness of the strike and the way
29 it can be continued, aren't you to some extent
30 affecting the outcome of it, depending on what

1 judgments are made on the way through?

2 THE COMMISSIONER: I don't know whether
3 or
4 I am/not and I don't think anybody knows because it
5 depends on all the circumstances and the conditions
6 at that moment. But all I do know is this-that one
7 of the most objectionable features from a social
8 standpoint is from an employer's standpoint is the
9 picket line, and it is one of the most insisting
10 things on the part of the employees as against the
11 employment of strike breakers. We have had it on
12 first class authority that that is the one fact that
13 stands out as a red emblem against them, the employ-
14 ment of people who have no business as they look
15 upon it, no business in that plant. They are sitting
16 in chairs that ought to be occupied by the strikers
17 and that itself I've come to the conclusion generates
18 more animosity than any other factor in a strike.

18 MR. ALDEN: I think there are some
19 practical difficulties Mr. Commissioner. Supposing
20 during the strike the employer decided he was going
21 to sell his business or move it from Toronto to
22 Vancouver.

23 THE COMMISSIONER: That may be, and
24 that is something the strikers will have to take into
25 account.

26 MR. ALDEN: And also how would we
27 know in Toronto if one of our employees wasn't working
28 in the City of Montreal?

29 THE COMMISSIONER: In the first place
30 when you have a large force this doesn't have any

1 affect because the plant is closed unless it is pure
2 labour and there is ample labour. So you are not
3 concerned with anything except the smaller plant and
4 it is to protect the smaller plant that there would
5 be and should be we are simply speculating and I don't
6 think there is anything cut and dried here at all,
7 but we are speculating on the possibility that in the
8 case of say a small industry which is an effective
9 industry and which is desirable to be maintained,
10 there might be an area of discretion within a
11 tribunal to allow a concession here or a concession
12 even to the employer if the labour union is strong
13 and powerful and you have a weak employer, you could
14 easily say well we will permit this employer to
15 engage strike breakers because you are unreasonable
16 in your position.

17 MR. RIGGIN: That is really arbitrating
18 a dispute isn't it?

19 THE COMMISSIONER: In a sense, yes.
20 But what is the fear and panic when you use the word
21 "arbitrator"? Most of our concerns in life are
22 arbitrated in the sense that we reach compromise, and
23 if we can't reach them ourselves then our whole law
24 administration is in one sense as you look on it,
25 arbitration.

26 MR. RIGGIN: Unquestionably it is.
27 The point of course and the realities are that labour
28 generally speaking dislikes the thought of arbitrating
29 disputes and employers dislike it.

30 THE COMMISSIONER: Yes but I am dealing

1 first with you as employers.

2 MR. RIGGIN: And employers dislike it
3 generally.

4 THE COMMISSIONER: Well let us confine
5 it to that. They dislike it. Why, do you know a
6 thousand years ago they wouldn't touch a jury, nobody
7 would. If you had a claim against me you would say
8 I am going to enforce that claim myself.

9 MR. RIGGIN: Here is one very basic
10 reason. As an employer we are accountable for the
11 results of the operation, if we have imposed upon
12 us direct costs or conditions which have serious cost
13 implications by someone else who has no accountability
14 for the results.

15 THE COMMISSIONER: But it has a very
16 powerful interest. Do you think the public have an
17 interest in matters of this sort?

18 MR. ROGERS: Generally speaking, sir,
19 but not with an individual employer.

20 THE COMMISSIONER: I know that but they
21 are controlling the actions of all of us. They control
22 wages and they control the whole economy. Today we
23 are in the midst now of an absolutely new slate of
24 taxation. Look at the implication of government today
25 in industry. We are spending millions and millions of
26 dollars to maintain private industry and all I say that
27 for is this, to show that the public interest is
28 gradually going through necessity.

29 MR. RIGGIN: But if I am manufacturing
30 pencils the public will decide whether I can manu-

1 facture pencils or not by my price.

2 THE COMMISSIONER: But the public is
3 interested in working conditions, today we have a
4 policy of full employment and I don't think we
5 realize what that means so far as the relation of
6 government with industry really reaches.

7 (10 minute recess).

8 MR. ROGERS: Could I make one comment
9 on the speculation made and that is that it would
10 seem to give some of the craft unions an undue
11 advantage, that is to say if you completely
12 neutralize the situation because take the operating
13 engineers. Many plants can't operate without the
14 operating engineers and if in effect no strike breaker
15 can be employed by the employer to take the place of
16 the striking operating engineers then the whole plant
17 has to close down. It seems to me that that would
18 give the craft unions an undue advantage in those cir-
19 cumstances and undue pressure could be exerted.

20 THE COMMISSIONER: Well you don't
21 mean that it is essential for the preservation of
22 the plant but for the continuance of its operation.
23 But supposing they break down today-what do you do?

24 MR. ROGERS: If they strike today you
25 may be able to go outside and hire someone to replace
26 them.

27 THE COMMISSIONER: But can you hire
28 highly skilled men that easily?

29 You may have some who
30 are retired who you could bring in for a period.

1 But take the larger
2 industries. It closes its doors except so far as
3 the maintenance is essential to preserve the plant.

4 MR. ROGERS: But I am just thinking of
5 the operating engineers union who normally cover
6 about ten or twelve men out of a plant of possibly
7 three or four hundred. You've got different
8 contracts and you are bargaining with them and the
9 suggestion that you threw out at us is if it is
10 adopted they would be in a position of much greater
11 power to pressure the employer into an agreement
12 which is to their liking because if they walk out
13 nobody can take over their work and the whole plant
14 is out.

15 THE COMMISSIONER: But have you ever
16 had that experience?

17 MR. ROGERS: I have had it threatened
18 but we have always had the alternative of going out-
19 side and getting someone to come in and do their
20 work.

21 THE COMMISSIONER: But are there such
22 engineers available?

23 MR. ROGERS: Well the state of the
24 market varies but there are retired people who you
25 can sometimes get to come in and do this work.

26 THE COMMISSIONER: But could you
27 carry on? You couldn't do it to the full extent
28 of operations.

29 MR. HAMILTON: Supervisory personnel
30 might be able to carry on.

1 THE COMMISSIONER: But the supervisory
2 people are in the plant and at the moment I have not
3 suggested any restriction upon employing them.

4 You may get someone
5 from another one of your plants, like surplus
6 personnel.

7 THE COMMISSIONER: Well that happens
8 in the situation like B.A. Oil.

9 MR. ROGERS: Yes they brought in
10 supervisors from all over the country.

11 THE COMMISSIONER: Well that is a
12 minor fact that will have to be considered.

13 But what I am con-
14 cerned with is, a very small number compared with the
15 whole work force might be given a distinct advantage
16 whether they are operating engineers, they might be
17 electricians in a certain circumstance.

18 MR. POLLOCK: Well you've got that
19 today at the Sault but what alternative did Algoma
20 Steel have at the Sault?

21 MR. ROGERS: In that particular situa-
22 tion I guess they didn't have any but there may be
23 alternatives facing the employer in some areas.

24 THE COMMISSIONER: Well it would depend
25 upon the total conditions there as to whether or not
26 it was an unreasonable deprivation and that might be
27 a question that would come within the discretionary
28 action of a tribunal. But it is a minor question,
29 because in the first place when, / say you go out to retired
30 men, the field is limited and the higher the scale

1 the less availability. Therefore, if you have two
2 hundred or even a hundred highly skilled men and they
3 go on strike and they close the plant down it is
4 almost an impossibility to replace them.

5 Well, I am assuming
6 it is an impossibility.

7 MR. HAMILTON: The difficulty there
8 is it may be an impossibility to replace them but
9 there may be allurements offered by competitive
10 employers who seek to enhance their employment in
11 some other industry or some other competitor. And
12 at that stage whether the strike is settled or not
13 the return of the rest of the people is not available.

14 THE COMMISSIONER: But you may replace
15 those men by resorting to outsiders.

16 MR. HAMILTON: But in those circum-
17 stances the relationship doesn't continue.

18 THE COMMISSIONER: It doesn't but
19 there is nothing to prevent you from reviving it if
20 and
21 you want to, if they are willing. But so far as the
22 current condition is concerned they are off and you
23 have someone else who is willing to go back to work
or go to work.

24 MR. HAMILTON: There may be some cir-
25 cumstances where the employer because of the skills
26 involved may be seeking to enhance the rate of pay
27 for those particular skills and the resistance to
28 that form of settlement may come from the balance of
29 the work force.

30 THE COMMISSIONER: It will come in any

1 event.

2 MR. HAMILTON: But if it does come
3 in any event then the attractiveness of the rate that
4 the employer was prepared to offer for those skills
5 is weakened if you will as a result of the resistance
6 from the balance of the work force.

7 THE COMMISSIONER: But that is what
8 you have today.

9 MR. HAMILTON: If the balance of the
10 work force, sir, is the group that depends on the
11 availability of those people and if they take other
12 jobs or go elsewhere in order to continue their
13 employment you are^{then}/left in the hopeless situation
14 perhaps of having four hundred people on strike and
15 fifty more working some place else and yet not being
16 able to operate the plant even if you could settle
17 the terms ^{and} / conditions.

18 THE COMMISSIONER: But if you have
19 the essential people working elsewhere, my suggestion
20 is that the barrier to the employment of a strike
21 breaker is removed.

22 MR. HAMILTON: But the rate of pay
23 to offer the skills in the first place it would be
24 found satisfactory in some circumstances by those
25 skilled people.

26 THE COMMISSIONER: But you are not
27 attributing to them unique characteristics that are
28 not applicable to other people are you?

29 MR. HAMILTON: I thought we were in
30 part, sir, because we are saying there is a shortage.

1 THE COMMISSIONER: There is certainly
2 a shortage but the objection is that you can replace
3 those high classed men by taking retired engineers
4 for instance.

5 MR. HAMILTON: The lack of replacement
6 may have been the first consideration that yielded a
7 higher offer to those kills in the first place. The
8 involvement vis-a-vis the employees at a lower level
9 and a comparison of their rate increase ^{with} / the higher
10 ones.

11 THE COMMISSIONER: Well it is impossible
12 to speculate in too great detail but I would say the
13 only thing that regulations can be applied to are the
14 general conditions that will be effective or exist,
15 and I think the answer to the suggestion that you
16 are deprived of going abroad is only relative really
17 to the total adjustment. And where we have
18 these two objectionable features of disagreements it
19 seems to me that we ought to see whether there are any
20 means by which a satisfactory adjustment of economic
21 force on each side can be achieved.

22 MR. RIGGIN: Would the striker give
23 up his employee status

24 THE COMMISSIONER: That might be a
25 question that would have to be considered. I can
26 see the force of it.

27 MR. POLLOCK: I think it is a
28 question of benefiting by some kind of contribution
29 or insurance. I suppose there are some companies
30 that will write strike insurance for companies in

1 case they go on strike that they will get some return
2 from the policy, I suppose the equivalent of that is
3 the strike benefit and something that they have saved
4 really by contributing so much a month.

5 MR. ROGERS: Just they or a million
6 other members of the union?

7 MR. POLLOCK: Well on the principle
8 that they are spreading the risk that is all and
9 getting a bigger return. They may never use it.

10 MR. HAMILTON: Looking at it from the
11 employees' point of view where could we find this
12 that is directed toward the pay of the strikers?
13 Is it coming exclusively from that local involved?

14 MR. POLLOCK: No, I think it would
15 have to come from whatever arrangement they have as
16 far as a central fund, the same as the employer's
17 profits can be bolstered up from other industries
18 and other jurisdiction that he happens to be operat-
19 ing.

20 MR. HAMILTON: One of the factors
21 then to be considered in any consideration of this
22 issue is the level of strike benefits then.

23 THE COMMISSIONER: It might be that.

24 MR. HAMILTON: Because the higher the
25 benefit presumably a person in some circumstances
26 could be paid more.

27 THE COMMISSIONER: But even there
28 the maintenance of the balance might require the
29 multiplication of a prohibition against strike
30 breakers. If you have a strong union that could

1 maintain those strikers indefinitely then you would
2 have a strong case. You say that you are running a
3 weaker employer.

4 MR. HAMILTON: Can these be effectively
5 implemented, sir, in that sense of where the
6 individual employee may receive his income from?

7 THE COMMISSIONER: I didn't get the
8 whole question.

9 MR. HAMILTON: I am wondering how to
10 enforce this kind of situation where the income going
11 into the hands of an individual could somehow or
12 other be policed.

13 THE COMMISSIONER: Well there are
14 means by which it can be. In Australia, in several
15 of the states I think, contributions of that sort
16 are prohibited, but there is always an effort to avoid
17 that and at times they claim that they have a right
18 to maintain life at least as a minimum of support.

19 MR. POLLOCK: We will leave this point
20 for a moment and go into the question of the purposes
21 of picketing that is raised on page 6. Again it is a
22 question of balance and we discussed that generally
23 before as the balancing^{of}/the arsenal of the employees
24 of the union against the arsenal of the employers.
25 You say that the purpose of picketing is to tell the
26 general public and to persuade people not to do
27 business with the employer and I assume that that
28 covers also other employees offering to take the work,
29 this business of persuasion. The next question is
30 what technique or what method or what form of

1 persuasion can they employ on a picket line? Your
2 objection stated here is against mass picketing and
3 I would like to know first of all how many
4 individuals constitute mass picketing and where does
5 the line draw, is it ten, twenty, fifty or a hundred?
6 We could easily say a hundred or a thousand is mass
7 picketing but if you get below that it is perhaps a
8 question of intricate judgment.

9 MR. ALDEN: Well it probably depends
10 on the circumstances such as size of the entry to
11 the plant. I would think that any time you have a
12 sufficient number of pickets to block exit or entry
13 to a plant then you have mass picketing.

14 MR. POLLOCK: Well two fairly large
15 people could block the exit to that door. It is not
16 a question so much of blocking the exits or physically
17 preventing people because one person can physically
18 prevent another by holding onto him but if as it has
19 been suggested you have a mass of people and they
20 don't block the access that they parade back and
21 forth and when somebody wants to go through it opens
22 up and the cars go through and the people walk
23 through, then the mass itself, you can have a
24 thousand people all standing there and if you have
25 a channel of access it is not obstruction.

26 MR. HAMILTON: Isn't intimidation a
27 very likely consequence from the mass. The mass it-
28 self is the intimidation and I think the experience
29 of the courts has been that where there is a mass
30 and I can't say exclusively / I haven't looked it up
because

1 in different cases.

2 MR. POLLOCK: Well how many? They
3 seem to say that anything over four is mass.

4 MR. ROGERS: At any particular gate.

5 MR. POLLOCK: Well around the plant yes
6 but at one particular gate, two per gate or sometimes
7 four per gate.

8 MR. HAMILTON: It's difficult to see if
9 the purpose is to communicate information that you
10 would need more than four at any particular gate.

11 MR. POLLOCK: Well it is the popular
12 support theory that used to advocate this method that
13 the greater number of people, and I might say if you
14 have a message to communicate and there are only two
15 or three people there those to whom you are communicat-
16 ing the message say well it looks as though only the
17 union leaders are out there and it is only supported
18 by two or three people. But if you have a large
19 number of people who are obviously advocating this
20 principle it has more popular appeal and therefore
21 people are perhaps more easily persuaded that it is
22 a reasonable position. It means that if I am one it
23 may not be important but if there are thousands of
24 people who adopt that principle then I say well it has
25 some reasonable appeal to a thousand people then it
26 may be worth my consideration.

27 MR. RIGGIN: I would think Mr. Pollock
28 that if there is one picket at a plant gate that
29 normally employs a thousand people and nobody goes
30 to work I would say that demonstration to the general

1 public is the solidarity of the strikers. More than
2 if there are nine hundred and ninety-nine up there
3 trying to stop them.

4 MR. POLLOCK: But the point is that the
5 person seeing this one man there doesn't know how
6 many workers are in the plant and they don't know how
7 many are working and they don't know how many are at
8 home. If they see them on the street and they can
9 count them and say at least there are so many people
10 that are supporting this idea.

11 MR. RIGGIN: Who are these people when
12 you say "they" that they see them, that they tell
13 them?

14 MR. POLLOCK: People who are wanting
15 to get a job there and people who want to deal or buy
16 the products. This may be a question of reasonable-
17 ness. Is this a reasonable strike? If you have
18 one or two people there it may not be as reasonable
19 as if you have a hundred people there.

20 MR. RIGGIN: Well that is my very
21 point, that this fellow who is going in for a job
22 if he sees that that plant is completely shut down.

23 MR. POLLOCK: But when does he see
24 that? You look at the outside of a building and
25 they may be operating machines having smoke coming
26 out of the chimney and it may look like it is a busy
27 plant from the outside.

28 MR. ALDEN: There is traffic in and
29 out and employees in and out, shift changes and what
30 not.

1 MR. RIGGIN: A struck plant is like a
2 morgue Mr. Pollock to a great extent.

3 MR. POLLOCK: Well, in some cases there
4 are plants that are capable of producing the atmosphere
5 of an operating plant and yet not operate. They can
6 run the machinery and they can shuttle people around
7 back and forth. If it is a question of weakening
8 somebody's will then you look stronger and that is a
9 technique. I don't suggest that any of you use it.

10 MR. HAMILTON: You could also look
11 stronger even though the persons picketing are not in
12 fact employees which is a consideration that has to
13 be considered. The validity of the proposition
14 surely is tested by the fact that invariably where
15 there is a mass, and you leave aside our definition of
16 "mass," but where there is a mass there is coercive
17 interference and physical violence takes place.

18 MR. POLLOCK: Then if you have that
19 you don't have to have mass. If you have ten people
20 or two people and there is this physical violence or
21 interruption in that way nobody has suggested that
22 they ought to be able to commit violence or that they
23 ought to be able to physically obstruct the premises
24 and that they ought to be able to slander you or
25 that they ought to be able to do damage to the property.
26 All those things in themselves would make the picket-
27 ing unlawful even if it were one or two people. But
28 the point that is made on the other side is that mass
29 itself, the number of people, ought not to be a ground
30 for an injunction. If this mass is doing something

1 else, if it is threatening then the mass is
2 irrelevant, it is threatening that is important.

3 MR. HAMILTON: Well I think in fairness
4 without the acts of violence and we're talking now
5 about a lawful strike; without the acts of violence
6 and intimidation that occur normally the restriction
7 isn't granted just because there happen to be sixty
8 people at an entrance where four might be a more
9 proper number.

10 MR. POLLOCK: Well let me put it this
11 way. Perhaps you would be in agreement with the
12 proposition that has been suggested that if you have
13 a group of people fifty or a hundred people, and
14 there is no violence and there is no physical
15 obstruction of access to the premises and there is
16 no damage to property, then they can be there in
17 sixty or seventy people strong.

18 MR. HAMILTON: But if you want to
19 that
20 communicate/there are sixty out of eighty people on
21 strike this can surely be done by the basis of the
22 card that is being carried. You don't need the
23 sixty people there to indicate they are on strike.

24 MR. POLLOCK: Well there is more
25 support, the only example I can give you is the
26 political aspect of a rally that occurs. When the
27 leader of a political party rents Maple Leaf Gardens
28 and it is not^{to}/proselytize the people because the
29 people they crowd in there are all the people who
30 know exactly what the position of the party is and
they know all the information aspect of it. They

1 want to get people^{so}/there in this group/that it will
2 be reported that 20,000 or 40,000 people came to
3 hear Lester Pearson, so that other people looking at
4 this say "gee if 40,000 people^{will}/come to listen to
5 Lester B. Pearson maybe he's got some ideas".

6 MR. HAMILTON: I'm sure there is no
7 objection to 40,000 people crowding into a union hall
8 in order to advance their interest publicly but we
9 are talking now of the numbers that can be permitted
10 on a public thoroughfare or blocking a road.

11 MR. POLLOCK: If it blocks the road
12 then it is a criminal offence. If it obstructs
13 people from going in and if they threaten people,
14 all those are criminal offences.

15 MR. ROGERS: It's almost inevitable
16 that this is bound to happen in most cases. You are
17 in effect setting up a situation permitting one to
18 exist where it can lead inevitably almost, tempers
19 are lost and somebody gets hurt.

20 MR. POLLOCK: Inevitably almost but
21 in those cases where it isn't almost and where you
22 can get twenty or thirty people there and there is
23 plenty of space to walk up and down with twenty or
24 thirty people.

25 MR. ROGERS: A car that goes over
26 sixty miles an hour may not cause any injury to anyone
27 but yet the law says our limit is sixty and you can't
28 go over sixty.

29 MR. POLLOCK: But our law doesn't say
30 that two pickets is it.

1 MR. ROGERS: No it doesn't but we are
2 considering whether there should be some limitation
3 on the numbers. You are saying no limitation at all.

4 MR. POLLOCK: No, I am saying that
5 unless the physical circumstances obstruct all these
6 things then why ought there be a limitation. If it
7 has none of the disadvantages.

8 MR. ROGERS: Well it will lead in
9 most circumstances as speeding over sixty or seventy
10 may lead to damage or to intimidation or something
11 of the kind that frequently does occur on mass picket
12 lines. That's like the flattened tire or the sly
13 kick or the innuendoes, threats and so on "if you
14 want to see your wife tonight you better get home
15 early". These are things slyly said as you go through
16 the picket line. There's a great psychological
17 comfort in having fifty fellows behind you because
18 they're not going to put fifty people in gaol or
19 seventy or whatever the number is.

20 MR. POLLOCK: But this conduct may
21 result in reducing the number of people.

22 MR. ROGERS: Well it is awfully hard
23 to get. You have a policeman there today and he goes
24 away for lunch and then bang, some of these things
25 happen. These are very difficult situations to handle
26 and they should be curtailed.

27 MR. POLLOCK: To what extent?

28 MR. ROGERS: I don't know, you'd have
29 to pick an arbitrary figure and it may have to be a
30 formula such as four per gate at the moment. Now I

1 don't know whether it should be four or six or eight.

2 MR. POLLOCK: Or twenty.

3 MR. ROGERS: Well you're getting out
4 of balance in some circumstances where you have twenty.

5 MR. HAMILTON: I think some of these
6 things are assessed at the time as to the number you
7 need to inform the public. There are other ways of
8 informing the public as to the numbers on strike in
9 addition to picketing. If indeed the purpose is as
10 I understand the law now to say to inform the general
11 public that a strike is taking place.

12 MR. POLLOCK: Well I'm asking you if
13 that ought to be the only purpose. The simple infor-
14 mation that you can get that, I suppose, by putting a
15 sign out there. But communication of that information
16 is for the purpose of persuading people. It is not
17 only to tell them that you have a product but to sell
18 the product.

19 MR. HAMILTON: But to what extent can
20 persuasion be coercive, and surely numbers alone can
21 be coercive.

22 MR. ROGERS: There is a balance there
23 between sale of the product and coercion.

24 MR. POLLOCK: Well I suppose it
25 depends in whose hand the balance is held.

26 MR. HAMILTON: Taking ^{it} that way Mr.
27 Pollock we could imagine the success of a company
28 that sends eighty salesmen up to an individual
29 customer's premises and says merely because we're
30 prepared to vote eighty people to ^{go} up to your premises

1 indicates our concern for your account.

2 MR. ALDEN: Just one other point Mr.
3 Pollock. The larger number of pickets you have the
4 more chances that you have of the subversive elements
5 the
6 and/hot heads of taking refuge in a crowd. Now we
7 have had this experience ourselves that when there
8 is trouble in the picket line it is not necessarily
9 our employees involved. Someone else has taken
10 advantage of that particular situation, whereas if
11 you have a smaller group of people they can be known
12 and identified as employees.

13 MR. POLLOCK: But as soon as you get
14 any of these things occurring you aren't in the simple
15 situation that I proposed earlier, where it is just a
16 group of people. As soon as you get that you are in
17 a different area. But the way they exist presently
18 it would appear that the mere numbers there on the
19 theory that something might occur is enough to reduce
20 them to two or three and the position is made on the
21 other side that that ought not to occur until some-
22 thing like that happens.

23 MR. O'CONNOR: It seems to me that the
24 court has recognized that a strike is not a tea party
25 and that where you have a large number of people
26 gathered together in respect to a strike that / will
27 there
28 be bound to be such acts as you have already mentioned,
29 violence and property damage and slander and this sort
30 of thing. And I think the courts quite properly in
recognizing this have imposed what you might say a
numbers game. But it is in pure recognition of what

1 will inevitably happen if there is not control.

2 MR. POLLOCK: But that unfortunately
3 is not what inevitably happens because there are cases
4 there are
5 where/twenty-five people picketing a premises and
6 there is no violence and there is no slander and there
7 are many of those circumstances that exist in this
8 province.

9 MR. HAMILTON: But the injunctions
10 haven't been granted as such have they?

11 MR. POLLOCK: No, but I'm not saying
12 that. I am arguing that inevitably as soon as you get
13 twenty-five people you get these things happen and the
14 courts take judicial notice of that. But there are
15 many cases in which this doesn't happen. And you
16 suggest on page 8 carrying this through that they
17 believe mistakenly, employees believe that they have
18 a right to mass picket. Now there is today in the law
19 no limitation on the numbers of picketing except that
20 under the Criminal Code in Section 366 it provides
21 that certain types of conduct are prohibited and if
22 you block the highway and physically obstruct anything
23 and if you trespass or cause damage or threaten violence
24 or commit violence, that is not the mass picketing
25 itself-that is perhaps in some cases the consequences
26 of mass picketing.

27 MR. RIGGIN: I think the point we're
28 trying to make here Mr. Pollock is that substantial
29 numbers of employees in this day and age believe that
30 it is not unlawful for them to link arms and mass
together at a plant gate to stop people from going in

1 because there is a strike.

2 MR. POLLOCK: All right that is the
3 position you are making, that the mistake is not mass
4 picketing, that the mistake is obstruction and they
5 think we can't physically prevent people from coming
6 in. That is the position and I understand it and
7 that is fair enough.

8 MR. ALDEN: But when you come in the
9 area of law enforcement you have a situation
10 where police have told supervisors that they cannot
11 cross the picket line.

12 MR. POLLOCK: I think you can go
13 down in Magistrates Court in any one day and find
14 many cases where police have thought they had the
15 right to do something and the law says they didn't
16 have.

17 MR. RIGGIN: So what we are really
18 talking about is the ignorance if you will, the
19 abysmal ignorance of many parties to the dispute
20 as to what is right and proper and what is wrong.

21 THE COMMISSIONER: But I don't think
22 it is limited to that. Some of the people believe
23 that if that is restricted that it shouldn't be.

24 MR. RIGGIN: I understand this too.

25 THE COMMISSIONER: And it is going to
26 be stretched to the limit because they feel they
27 want to stimulate not only the spirits of the strikers
28
29 but depress the willingness of the strike breakers.
30 In the ordinary industry I don't think the public has

1 any interest at all. Certainly you don't find
2 customers going into industrial establishments no
3 matter how small they might be. Generally they are
4 on streets where there is a minimum of pedestrians,
5 and their purpose is not, and they've admitted it, it
6 is not to inform the public. The public knows all
7 about it but it is operate on their own men and
8 strangers who may come in.

9 MR. HAMILTON: Also sir there are
10 the rights of the individual other groups of employees
11 that we have discussed before that may not be part of
12 that bargaining unit and normally I don't think there
13 is any attempt made by representatives to discriminate
14 as to which group they are going to be coercive
15 towards. Normally it ^{has} / a general coercive effect.

16 MR. POLLOCK: Well I think it is a
17 question without getting into semantical argument
18 of liberties as long as you don't physically obstruct
19 people then the only thing that may obstruct people
20 is the communication of this idea that these people
21 are on strike today and I am in another unit of the
22 plant and I may be on strike some other day and that
23 I want their support in my line and I won't cross.
24 You may have a contract with your employees which
25 doesn't permit them not to cross ^{if} so that/they refuse
26 to cross you can discipline them. You can take
27 disciplinary action. In some cases employers do put
28 a term in the contract as part of the negotiation
29 that the individual employees in another unit are
30 free not to cross and then when they do take advantage

1 of that option which they have negotiated the
2 employer quite naturally I suppose starts to feel
3 the pinch of that term. So you have a remedy
4 against those employees that refuse to cross, and
5 you have a remedy against those employees who are
6 picketing if they are physically obstructing these
7 people from crossing. But the question is you
8 ought not or ought you to have a remedy against these
9 people if they are persuasive in communicating their
10 idea and they do it legitimately without recourse to
11 violence, physical obstruction, property damage and
12 threats. They just do it by having a number of people
13 there, maybe twenty-five people.

14 MR. HAMILTON: It is difficult to
15 walk through that large group of people in a narrow
16 confined space without feeling oppressed and coerced.
17 It's like running the Indian gamut if you will.

18 MR. POLLOCK: Well I don't conceive
19 of a picket line of twenty-five people in the situa-
20 tion I'm talking about running through this line of
21 people with the sticks.

22 MR. HAMILTON: It does depend on the
23 area and the attitude.

24 MR. POLLOCK: It depends on whether
25 or not you are blocking access. If you have every-
26 body across the street in a big field, a thousand
27 people there and only three people standing in front
28 of the picket line there would be no objection
29 because those people aren't running the gamut through
30 those thousand in the field, they are crossing two or

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1 three people.

2 THE COMMISSIONER: Well what if they
3 all had telescopes?

4 MR. POLLOCK: Then they would be watch-
5 ing, besetting them as they walked by. But that is
6 the problem of the struggle. One side fights against
7 the other and if you go and help one side you are an
8 enemy of the other side. There aren't ^{any} neutrals
9 unless you stay home.

10 MR. HAMILTON: If you stay home you
11 are making a decision too aren't you?

12 MR. POLLOCK: Well you aren't helping
13 one side or the other.

14 MR. HAMILTON: Well in fairness you
15 have made your determination. If your obligation is
16 to go to work and you've remained home surely you have
17 indicated a choice.

18 MR. POLLOCK: Well alright, unless you
19 have contracted for that choice.

20 MR. HAMILTON: Well this is an element
21 of the bargain.

22 MR. POLLOCK: You can go to work if
23 you want to, you can go to work half days. I'll go
24 in half a day and go out half a day and I'll support
25 both sides. Now turning now to the injunctions pro-
26 cedures, reference is made to irreparable harm and you
27 raise this at the end of your question when you talk
28 about incorporation or rather making unions liable
29 for suit. The irreparable harm is the harm that can
30 be compensated by damage, that is by law I suppose.

1 Now if you have a union that is one of these unions
2 that we were speaking about earlier, these big power-
3 ful unions that have all this money then they aren't
4 really if they become a suable entity for any wrong-
5 ful acts then the damage that they are causing is not
6 irreparable if you can sue them for it and recover it
7 so that as you suggest there may be a limitation in
8 the numbers of injunctions that are sought if unions
9 are suable. The question I have or / ^{that} arises out of
10 that is twofold. One, do you overcome the traditional
11 reluctance of an employer to sue his employees for
12 damages; and two, the British Columbia experience
13 which is probably an area of equivalent organization
14 of unions to Ontario, hasn't had that result from the
15 availability of legal action against unions for
16 damages. The most attractive remedy in British
17 Columbia so far as the employer is concerned faced
18 with a picket line is the injunction, because it too
19 ^{it} has broader thrust than/would be narrowly designed
20 for. Just as the picket line has the massed number
21 ^{then} of people / the picket line has a broader threat
22 than merely communication of the information. There
23 are lots of side effects to both those pills. So I
24 ask whether you think that that is the test of whether
25 the injunction ought to be granted or not. If they
26 are doing something wrongful, you can't get money
27 damages from them now but if you could get money
28 damages would you still seek injunctions?

29 MR. ALDEN: Well considering this
30 immediate relief, what often happens is that a customer

1 will place an order with a manufacturer for a given
2 amount of material and quite often the material is
3 produced and finished according to the order pattern
4 of the manufacture but it is not delivered because
5 the customer is not ready for it. So you have it
6 laying on your property and a strike takes place and
7 you can't get it out of the plant. Now I suppose
8 in some situations that you could assess the amount
9 of damage or the amount of harm that was done but
10 this involves legal procedures, court costs and
11 everything else whereas the material is sitting there
12 and the employees have already been paid for the
13 manufacture of it why can't it be released to the
14 customer who needs it and if he doesn't get it he is
15 going to suffer damages and so are the employees
16 through loss of work.

17 MR. POLLOCK: Well in the example you
18 give where this agreement has been concluded and you
19 are just storing it for the employer then perhaps he
20 is entitled to go in and get those goods but it is a
21 question of whether you are entitled to operate and
22 make two goods by employing other people. The argu-
23 ment is simply this, that the injunction is used to
24 weaken the picket line to such an extent to enable an
25 employer to carry on his business.

26 MR. HAMILTON: You are into one aspect
27 of carrying on the business. The aspect Mr. Alden
28 was referring to was the element and that ^{is} still carry-
29 ing on business.

30 MR. POLLOCK: Well carrying on

1 production then. Let us assume in a simple case we
2 have a production unit that is on strike and they
3 picket and nobody crosses that picket line. You get
4 an injunction and it reduces it to two or three and
5 then other people cross the picket line and go in and
6 do the production work and the factory is back to
7 production.

8 MR. RIGGIN: Well surely that isn't
9 what happens in the majority of the cases just because
10 an injunction has been obtained. The injunction is
11 normally obtained to get in your salaried and super-
12 visory people to do payroll and administrative work
13 and so on.

14 MR. POLLOCK: If that is the basis of
15 the injunction then you wouldn't have any quarrel
16 with the stipulation in the injunction that you ought
17 to employ no strike breakers if you would obtain an
18 injunction.

19 MR. RIGGIN: Then we come right back
20 to all of the complex points raised by the Commissioner.

21 MR. POLLOCK: No, no, because you have
22 the option in the absence of the injunction to employ
23 as many people as you can or as many people as will
24 work. But if you are seeking an injunction and the
25 purpose you suggest for an injunction is to get your
26 supervisory personnel and make up payrolls and run
27 the office or to get goods that have been produced
28 out of the plant then you haven't any quarrel about
29 bringing in strike breakers.

30 MR. RIGGIN: I didn't suggest that

1 that was the sole purpose of obtaining the injunction.
2 I simply was saying that just because injunctions are
3 obtained doesn't mean that in every case or even in
4 the majority of the cases that production immediately
5 starts up again. Now I have no statistics in this
6 regard but certainly as far as our group of companies
7 is concerned that is the circumstance.

8 THE COMMISSIONER: I suppose you can't
9 say this -that the most immediate objection is the
10 obstruction of your officers who are admittedly not
11 on strike and want to go to their positions. That is
12 meant immediately.

13 MR. RIGGIN: Yes sir.

14 MR. POLLOCK: Well that is fair enough
15 because that position as I understand it in both those
16 examples the goods that have been produced and also
17 the physical maintenance of the plant, the boilermakers,
18 the stationary engineers, other office personnel and
19 some maintenance work that has to be done or the plant
20 will collapse, that type of thing they can have free
21 access if they can only get it by the injunction. But
22 the complaint is that not only those people pass under
23 this umbrella of the injunction but the employer is by
24 virtue of having reduced the picket line to sometimes
25 none but say to two, that he can then attract all kinds
26 of other people to come in and do the production work,
27 the work that the unit on strike had done before the
28 strike.

29 MR. ALDEN: Or even perhaps his own
30 employees who may be content to work under the condi-

1 tions set out by the employer and the reason he has
2 now come to work he is no longer intimidated by this
3 mass picket line.

4 MR. POLLOCK: Alright then but he is
5 not a strike breaker.

6 MR. ALDEN: Yes and why shouldn't he
7 be permitted to come to work if he wants to.

8 MR. POLLOCK: Well we are cut against
9 the argument that I suggest to you that those
10 positions and it just adds another example of where
11 an injunction might be obtainable for the original
12 employees who want to go back to work. But where
13 the outside employee is sought to be brought in and
14 you have raised five or six other issues and we are
15 not talking about outside employees but where the
16 outside employee is sought to be brought in what is
17 wrong with saying "all right if you are going to get
18 an injunction you can get it for all those other
19 purposes but if you are going to use this umbrella
20 of injunction to bring in strike breakers we won't
21 grant you the injunction" and the injunction ceases.
22 If it is not your intent to use the injunction to
23 bring in strike breakers then that doesn't affect you.
24 You get the injunction to keep the plant in its
25 physical integrity and you can get your supervisory
26 personnel in there to do payrolls and this other work,
27 the goods that have been made at the time of the
28 strike can be shipped to those who purchased them.
29 THE COMMISSIONER: Well how long do
30 you stay out of business till you either go bankrupt

1 or meet the union's demands. This is the stage
2 that you are setting. There is no other result to
3 it.

4 MR. POLLOCK: You can employ strike
5 breakers if you want in these circumstances but you
6 can't get an injunction to help you employ strike
7 breakers.

MR. ALDEN:

8 For example, what about a small IGA
9 ^adealer dealing in/small retail way with eight or ten
10 clerks, and organized. His entire capital is invested
11 in that enterprise which he works in himself. As a
12 result of a breakdown in communications or a strike
13 occurs in an event for whatever the reason. Is he
14 then to be confronted with mass picketing and unable
15 to hire replacements in order to keep his business
16 in operation? Is that the price that he is expected
17 to pay at this stage, whatever his other considerations
18 may be?

19 MR. POLLOCK: How many employees has
20 he got? He can have eight people picketing his
21 premises or he can have ten or twenty-five-is that
22 mass picketing. If he has small premises and they
23 are all bunched together and nobody can walk by then
24 you've got physical obstruction and they are wiped
25 out for that reason.

26 MR. HAMILTON: You are talking about
27 the numbers being related on a mass basis.

28 MR. POLLOCK: Well I don't know what
29 mass means.

30 MR. O'CONNOR: But for him to go to

1 court and get an injunction to clear up the twenty-
2 five people massed in front of this persons' entry or
3 his premises, is that he can get that injunction for
4 that reason but with the undertaking that he not employ
5 strike breakers. Now what is the point of getting the
6 injunction? He is out of business.

7 MR. RIGGIN: In the case Mr. Hamilton
8 refers to this man is out of business.

9 THE COMMISSIONER: You are building a
10 tremendous case for the opposition or for the abolition.

11 MR. HAMILTON: With great respect I
12 intend to relate this to the fact that there is a
13 and
14 check balance here, / the availability of the alternate
15 employment is one of the measures as to whether or not
16 the strike will take place in the first place. When
17 you have the indirect relationship, when you deal with
18 the abolition, you then effectively have a great
19 restriction placed on the validity of the collective
20 bargaining process that takes place and after all the
21 best relationship that can result is the one that is
22 mutually satisfactory.

23 THE COMMISSIONER: I am not influenced
24 a great deal by that because you can become obsessed
25 with any idea and apparently there is a general
26 obsession about this matter of free bargaining. I
27 must say that words themselves have become influences
28 and not the realities behind them. Our whole lives
29 are impregnated with compromise which is simply settle-
30 ment of these things, and we take the advice of other
people. Everytime you go to court you do that. Yet

1 we talk about this as if it were a sacred thing and
2 something that you have to keep your hands off and
3 maintain its character.

4 MR. HAMILTON: There is one basic
5 difference sir with court action and that is that
6 normally the two parties are not going to maintain a
7 relationship in future.

8 THE COMMISSIONER: Aren't they going
9 to be fellow citizens generally. Don't think for a
10 moment that law suits haven't resulted in life long
11 feuds between families. So you can't wipe that off.

12 MR. HAMILTON: No sir but I say in
13 the majority of collective bargaining situations
14 eventually a settlement is arrived at.

15 THE COMMISSIONER: It may be that
16 loss or destruction of one of the parties. I wouldn't
17 call that a settlement.

18 MR. HAMILTON: Well perhaps that may
19 be a part of the price.

20 MR. POLLOCK: Is what you are saying
21 that in any number in any year of situations open for
22 collective bargaining the overwhelming majority or
23 75 or 80% or 90% in some cases are settled without
24 going to strike by the parties themselves with the
25 interposition in some places of conciliation.

26 MR. HAMILTON: And in many cases
27 without the conciliation process. When you analogize
28 Mr. Pollock or when an analogy is drawn to the courts
29 there surely the decision is one that separates people
30 whereas in a collective bargaining relationship

the
eventually and I don't know / percentage and I can't
help in that regard but eventually a resolution is
achieved that is satisfactory or that results in a
settlement. Both sides by signing surely must
evaluate the circumstances. When you analogize to
the court in these circumstances as opposed to a
divorce action when you apply judgment you are
attempting to result in the reconciliation of a
matrimonial cause if you will where the parties will
continue to cohabit, and this is very, very difficult
if not impossible where there is going to be continued
cohabitation.

MR. POLLOCK: You feel and I think it
pervades the whole brief that with the exception of
the economic positions of the two parties with which
they are or with which they approach the bargaining
table and any subsequent changes in the economic
circumstances such as sudden unemployment or a sudden
boom or something like that, that given those things
the only role of the government or the only role of
society ought to be to balance off the remaining
techniques of waging a struggle. Not to assist any-
body economically or to detract from them economically
or to tie their hands or give another glove to one of
them but to say all right we are going to give a
balance of communication, if you are going to have
your strike some place / or operate your plant in a
different location / perhaps the communications
ought to spread that far. If you are going to per-
suade or picket then you ought to persuade and picket

1 in these circumstances, as long as you achieve a
2 balance that is what you are striving at in this
3 whole thing, the balancing of the strengths other than
4 the economics ^{of} / the parties, the communicative powers.
5 Is that what you are saying?

6 MR. HAMILTON: I'm not sure whether I
7 can put it on that basis but I think generally yes.

8 MR. ALDEN: I think we would agree,
9 generally.

10 MR. POLLOCK: And that you feel that
11 the present two or three pickets per gate at the
12 original site of the dispute is a balance between the
13 interests of the union and the employees as against
14 the employer?

15 MR. HAMILTON: In the interests of
16 removing coercion and the intimidation if this is the
17 result, yes. I don't think we have said that picket-
18 ing should be limited per se to any given number Mr.
19 Pollock, I think it is a question of a mass picketing
20 eventually being coercive in those circumstances with
21 the result that it is restricted or restrained to some
22 extent.

23 MR. POLLOCK: Well the argument is
24 that as soon as it becomes effective you should limit
25 it.

26 It becomes effective due
27 to coercion.

28 MR. HAMILTON: Well let us take that
29 to the other extreme if we may. Let's take a plant
30 of eight hundred people with the operating engineers

1 who may be on strike. Now of what effect is the
2 on
3 eight people being/strike as such in terms of the
4 picket line?

5 MR. POLLOCK: It will prevent other
6 operating engineers from coming in and taking the job.

7 MR. HAMILTON: Well it's going to
8 prevent presumably leaving aside the coercive effect,
9 it is going to affect the general knowledge and so
10 forth. Now at that stage is there a balance, this
11 balance of numbers that we were talking about before?

12 MR. POLLOCK: There is a balance
13 except for the economic factor that these people are
14 crucial to this operation, that is their economic
15 strength and that is their bargaining power. If you
16 could replace engineers like that then they have no
17 economic strength. That is the only economic strength
18 of a craftman or workman that his skill is so rare
19 that it is irreplaceable.

20 MR. HAMILTON: If you are not free to
21 hire alternative personnel then their value is

22 MR. POLLOCK: But if you are not free
23 to hire personnel because they don't want to work for
24 you, because they respect these people who are out
25 on - ~~strike~~ then that

26 MR. HAMILTON: I am merely pointing
27 out that even if there were mass picketing by anybody
28 involved in the bargaining there are some cir-
29 cumstances that wouldn't be effective anyway.

30 MR. POLLOCK: Well it is a question
again of what mass picketing means.

1 MR. HAMILTON: Where the effort is
2 mass in the sense of being coercive surely these
3 elements of coercion should be restrained and normally
4 they are only granted where there has been some
5 intimidation or violence or personal property damage
6 or something.

7 MR. POLLOCK: I suppose if you say
8 you have twenty-five pickets and they don't have any
9 effect then by definition they aren't coercive, even
10 though they are shouting and screaming and
11 threatening and doing all these things. If people
12 all go through the line then they are not coercive.

13 MR. HAMILTON: Again it is difficult
14 to just use numbers depending on the other conducts
15 you have mentioned.

16 MR. POLLOCK: Well I think I under-
17 stand your position. Thank you very much gentlemen
18 for appearing this morning.

19 The Commission is adjourned until
20 Monday morning in Sudbury.

21
22 ---Adjournment.
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